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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
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11 CORY SPENCER, an individual;
DIANA MILENA REED, an
12 individual; and COASTAL
PROTECTION RANGERS, INC., a
13 California non-profit public benefit
corporation;

14 Plaintiffs,

15 v.

16 LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF THE
LUNADA BAY BOYS, including but
17 not limited to SANG LEE, BRANT
BLAKEMAN, ALAN JOHNSTON aka
18 JALIAN JOHNSTON, MICHAEL
RAE PAPAYANS, ANGELO
19 FERRARA, FRANK FERRARA,
CHARLIE FERRARA, and N.F.; CITY
20 OF PALOS VERDES ESTATES;
CHIEF OF POLICE JEFF KEPLEY, in
21 his representative capacity; and DOES 1
- 10,
22

23 Defendants.

Case No. 2:16-cv-02129-SJO-RAO

**DECLARATION OF PETER T.
HAVEN IN SUPPORT OF
OPPOSITION BY DEFENDANT
MICHAEL PAPAYANS TO
PLAINTIFFS' MOTION FOR
ADMINISTRATIVE RELIEF**

[Fed. Rules Civ. Proc., Rule 56(d)]

Date: September 5, 2017
Time: 10:00 a.m.
Place: Courtroom 10C
350 W. 1st Street
Los Angeles, California 90012

Hon. S. James Otero

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25 I, Peter T. Haven, hereby state and declare:

26 1. I am an attorney admitted to practice before this District Court and all
27 Courts of the State of California. I am the attorney of record for Defendant Michael
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1 R. Papayans (“Defendant” or “Papayans”). I have personal knowledge of the
2 matters set forth herein such that if called upon to testify I could and would
3 competently state as follows under oath.

4 2. I make this Declaration in support of Defendant Papayans’ concurrently
5 filed opposition to the motion for administrative relief filed by Plaintiffs Cory
6 Spencer, Diana Milena Reed, and Coastal Protection Rangers, Inc.

7 3. On March 20, 2017, I served Defendant Papayans’ document
8 production responses. On March 24, I also produced, among other things, a
9 telephone extraction report for Defendant Papayans’ cell phone for the time period
10 from January 2017 to the production date. A true and correct copy of my email to
11 all counsel regarding the produced documents, which were attached to the email, is
12 attached hereto as Exhibit 1.

13 4. On April 7, Plaintiff’s counsel Victor Otten sent me a meet-and-confer
14 letter requesting an in-person meeting by April 17. A true and correct copy of the
15 letter is attached hereto as Exhibit 2. On April 17, I met with Mr. Otten in-person at
16 Mr. Otten’s office. During that meeting, I advised Mr. Otten that the telephone
17 extraction report began in January 2017 (which was one of the issues raised in the
18 meet-and-confer letter), because Defendant Papayans had two prior cell phones, one
19 of which was lost in January 2017, and another which was taken into evidence by
20 the Los Angeles Police Department (“LAPD”) and/or District Attorney’s (“DA”)
21 office in approximately February 2016.

22 5. On May 4, Mr. Otten emailed me that he had contacted the DA, and the
23 DA would release the phone pursuant to a stipulated order. A true and correct copy
24 of Mr. Otten’s May 4 email is attached hereto as Exhibit 3, p. 2.

25 6. On May 12, I also produced 83 pages of Mr. Papayans’ cell phone
26 billing invoices from Oct. 7, 2015, through May 6, 2016 (covering dates of service
27 from around Sep. 9, 2015, through Mar. 13, 2016). A true and correct copy of my
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1 email to Plaintiffs' counsel regarding the production is attached hereto as Exhibit 3,
2 p. 1. The cell phone invoices were attached to the email and labeled MP1 to MP83.

3 7. On May 15, I sent an email to Plaintiffs' counsel agreeing to stipulate
4 to a cell-phone order, with the phone released to our retained electronic discovery
5 consultant, Meridian Discovery. A true and correct copy of my May 15 email to
6 Plaintiffs' counsel is attached hereto as Exhibit 3, p. 1. The purpose of turning the
7 phone over to our consultant was to allow me to review the information prior to any
8 production, and, if necessary screen out and object to any irrelevant, private,
9 privileged, and/or otherwise non-responsive documents. My May 15 email asked
10 Plaintiffs' counsel to "Please send me a proposed Stipulation." Exhibit 3, p. 1.

11 8. Over three weeks later, on June 8, Plaintiff's counsel sent me a
12 proposed Stipulation and Order. A true and correct copy of Plaintiffs' email is
13 attached hereto as Exhibit 4. On June 15 and 19, I made some proposed revisions,
14 and on June 23, Plaintiff's counsel made further proposed revisions. Attached
15 hereto as Exhibit 5 are true and correct copies of our email exchanges, including the
16 June 23 request by Plaintiffs' counsel for further changes. Exhibit 5, p. 1.

17 9. On June 27, I *signed* the proposed Stipulation and Order and sent it
18 back to Plaintiff's counsel. Attached hereto as Exhibit 6 is a true and correct copy
19 of my June 27 email transmittal to Plaintiffs' counsel, which included my attached
20 signed stipulation. On June 29, Plaintiff's counsel made further changes, and on
21 July 3, I once *again signed* and sent the proposed Stipulation and Order back to
22 Plaintiff's counsel. Attached hereto as Exhibit 7 are true and correct copies of
23 Plaintiffs' counsel June 29 email with proposed changes, and my July 3 reply email
24 with my signed stipulation attached once again.

25 10. On July 11, Plaintiffs' counsel copied me on his email reply to a July
26 10 request from the Magistrate Judge asking for a Word version of the proposed
27 Stipulation. Plaintiff's counsel's response email stated, "Sorry for the delay." A
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1 true and correct copy of this email is attached hereto as Exhibit 8.

2 11. Attached hereto as Exhibit 9 is a true and correct copy of the stipulated
3 order entered by the Magistrate Judge on July 12. Among other things, the
4 stipulated Order stated that information would be extracted, the parties would then
5 agree on search parameters, and I would have five (5) days to review extracted
6 information and assert any objections, prior to any production. The stipulated order
7 also called for Meridian to return the phone to the LAPD upon completion. Exhibit
8 9, p. 2, l. 25 – p. 3, l. 3.

9 12. I did not communicate with or contact the DA or LAPD. Plaintiffs’
10 counsel handled *all* communications with the DA and/or LAPD.

11 13. On August 1, the phone was delivered to Meridian, but I did not learn
12 of the delivery until August 2. On the afternoon of August 2, Meridian requested
13 pin information to access the phone, which I supplied after requesting information
14 from my client.

15 14. Expecting that we would get access to the phone, on August 3, I asked
16 Plaintiffs’ counsel to consider and send me proposed search paramaters pursuant to
17 the stipulated order. I anticipated that Plaintiffs’ counsel would submit a reasonably
18 tailored set of proposed search parameters. On August 4, however, Plaintiffs’
19 counsel, for the first time, sent broad proposed search parameters consisting of an
20 estimated 114 alleged names, an estimated 114 telephone numbers, and a “partial
21 list” of some 54 email addresses. A true and correct copy of Plaintiff’s counsel’s
22 August 4 email to me is attached hereto as Exhibit 10.

23 15. After I sent my August 3 email to Plaintiffs’ counsel requesting
24 proposed search parameters, Meridian’s representative, Arman Gungor, advised me
25 that he could not access the phone. I immediately arranged for Defendant Papayans
26 to meet with the Meridian representative to try to access the phone. I later learned
27 from Plaintiff’s counsel that the DA’s office apparently had extracted information
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1 from the phone, which I did not know. It was unclear to me if the DA extraction
2 process had interfered with our ability to access the phone.

3 16. Mr. Papayans met with me and Mr. Gungor at my office on Monday,
4 August 7. Mr. Papayans tried to access the phone by thumb-print recognition,
5 which he stated was his prior method of access. He also supplied a number of pin
6 codes, which were not successful.

7 17. I thereafter consulted with Mr. Gungor regarding other ways to access
8 the phone, but he raised concerns that various methods might cause loss of
9 information on the phone. On August 10, Mr. Papayans again met with me and Mr.
10 Gungor at my office to try additional pin codes and/or to see if there was any other
11 way to access the phone. The phone could not be accessed, and Meridian
12 recommended sending the phone to Cellebrite, Inc. in Parsippany, New Jersey. I did
13 not, however, want to send the phone to an east-coast provider, and the stipulated
14 order also indicated that Meridian was to return the phone to the LAPD, which
15 posed chain-of-custody concerns.

16 18. On August 10, Plaintiff's counsel stated to me in an email, "the vendor
17 who handled Defendant Alan Johnston's phone had no trouble getting the
18 information without a password. Maybe we can send it there." A true and correct
19 copy of this August 10 email is attached hereto as Exhibit 11, p. 2. On August 11, I
20 replied and stated, "I do not know the service used on Johnston's phone," A true
21 and correct copy of my August 11 email is attached hereto as Exhibit 11, p. 1.
22 Plaintiff's counsel did not provide the vendor's name.

23 19. Defendant Johnson's counsel, Patrick Carey, was away on vacation and
24 I tried to reach him. Late on Friday, August 11, Mr. Carey advised me the vendor
25 they had used was "Setec" and he provided a local number. I did not receive this
26 information until well after the close of business that Friday.

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